

**BEFORE THE ADMINISTRATIVE HEARING COMMISSION  
STATE OF MISSOURI**

**DOUGLAS M. OMMEN, Director** )  
**Department of Insurance, Financial** )  
**Institutions and Professional Registration,**)  
**State of Missouri,** )

**Petitioner,** )

**vs.** )

**JOSEPH E. WARDEN,** )

**Respondent.** )

**Case No.: 06-0996 DI**

*060602238C*

**FILED**

**APR 11 2007**

**ADMINISTRATIVE HEARING  
COMMISSION**

**PETITIONER'S BRIEF**

Pursuant to the Commission's Order dated March 12, 2007, the Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration, through counsel, hereby submits the following Proposed Findings of Fact and Conclusions of Law.

**FACTS**

1. Petitioner is the Director of the Missouri Department of Insurance, whose duties include the regulation, supervision, and discipline of licensed insurance producers pursuant to RSMo Chapters 374 and 375.

2. The Missouri Department of Insurance issued a producer license to Joseph E. Warden ("Respondent") on June 20, 2000 (license # PR113017). Respondent's producer license expired on June 20, 2006. *AHC Transcript at page 9 and Exhibit 1.*

3. The Commission has jurisdiction over this Complaint pursuant to § 621.045, RSMo (Supp. 2005).

4. On July 5, 2006, the Director, through counsel, filed a complaint seeking cause to discipline Respondent's insurance producer license pursuant to § 375.141.1(2), (4), (7), and (8), RSMo (Supp. 2005).

5. On August 3, 2006, Respondent filed an answer to the Director's complaint denying all allegations except those included in paragraphs 1 – 3 of the complaint.

6. On February 20, 2007, the Commission held a hearing on the matter. The Director was present, through counsel, and presented evidence in support of his complaint. Respondent was not present personally nor was he present through counsel. *AHC Transcript at page 2.*

7. Respondent was licensed as an insurance producer at all times relevant to the Director's complaint. *AHC Transcript at page 9.*

8. At all times pertinent to Petitioner's complaint Respondent was president and chief executive officer of Capital Reserve Life Insurance Company ("Capital Reserve"). *AHC Transcript at page 10.*

### **ARGUMENT**

9. The substantial and competent evidence presented in this matter demonstrates that Petitioner has established cause to discipline Respondent's license pursuant to § 375.141.1(2), (4), (7), and (8), RSMo (Supp. 2005).

10. The substantial and competent evidence in the record establishes that while an officer of an insurance company formed under the laws of this state, Respondent directly or indirectly used or employed, or permitted others to use or employ, money, funds, or securities

of the company for private profit or gain, a violation of § 375.390 RSMo (2000), and grounds for discipline of Respondent's insurance license pursuant to § 375.141.1(2) RSMo (Supp. 2005).

In response to an independent financial audit, the Missouri Department of Insurance, Financial Institutions and Professional Registration conducted a financial examination of Capital Reserve from August 8, 2005 to June 30, 2005, examining Capital Reserve records from January 1, 2002 to June 30, 2005. *AHC Transcript at page 23 and Exhibit 2.*

The financial examination revealed that in January of 2001 Respondent sold a health insurance policy to the company and initiated a company program in association with the health insurance policy whereby Capital Reserve would reimburse out-of-pocket medical expenses and co-payments paid for plan beneficiaries. *AHC Transcript at pages 24-25 and Exhibit 2.* The financial examination further revealed that, as a result of this reimbursement program, during 2004 and 2005 Capital Reserve paid nearly six hundred thousand dollars (\$600,000.00) in medical, dental, and non-medical reimbursements to Respondent and his spouse, Linda Warden. *AHC Transcript at pages 8 and 25 and Exhibits 2, 5, 6, 8 – 18.* During 2004 and 2005 multiple, improper, out-of-pocket medical, dental, and non-medical reimbursement requests were submitted to Capital Reserve in the names of Respondent and Linda Warden. Capital Reserve issued checks payable to Respondent and Linda Warden in response to those reimbursement requests. *AHC Transcript at pages 25, 28-29, 31 and Exhibits 2, 5-18.*

During 2004 and 2005 Respondent personally requested reimbursements and collected reimbursement checks from Capital Reserve. *AHC Transcript at page 19 and Exhibit 3.* During 2004 and 2005 Respondent received multiple reimbursements in response to multiple

requests for identical reimbursement items and reimbursements for items that could not be verified as having a reasonable business purpose. *AHC Transcript at pages 40-41, and Exhibit 14-16.* Some reimbursement checks were endorsed in the name of either Respondent or Linda Warden. Some reimbursement checks were stamped “for deposit only” into Respondent’s checking account which is jointly held with Linda Warden. *Exhibit 16.*

Many reimbursement requests submitted in the names of Respondent and Linda Warden indicate that Boone Hospital provided medical services to Respondent and Linda Warden during 2004 and 2005. *AHC Transcript at pages 32-33, 36 and Exhibits 10-13.* When presented with the medical reimbursement requests, Boone Hospital could not verify most of the charges, dates of service, and account numbers for services Respondent and Linda Warden claimed to have received. *AHC Transcript at pages 28 and 30-31 and Exhibits 6 and 9.*

On or about September 16, 2005, Respondent advised Dana Whaley, Investigator for Petitioner, that he was aware that seemingly falsified medical reimbursement requests had been submitted in his and Linda Warden’s names. *AHC Transcript at pages 14-15.* Respondent’s statements to Dana Whaley constitute an admission of forgery and insurance fraud, a violation of § 570.090.1(4), RSMo, (2000) and a ground for disciplining Respondent’s insurance license pursuant to § 375.141.1(7) and (2) RSMo (Supp. 2005).

Respondent’s receipt of money from Capital Reserve for improper expense reimbursements and admitted knowledge of falsified reimbursement request documents constitute misappropriation in the course of doing insurance business, a violation of § 375.390, RSMo (2000), and is grounds for discipline of Respondent’s insurance license pursuant to § 375.141.1(2) and (4), RSMo (Supp. 2005).

11. The substantial and competent evidence in the record establishes that Respondent used fraudulent, coercive or dishonest practices, or demonstrated incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere, grounds for disciplining Respondent's insurance license pursuant to §375.141.1(8), RSMo (Supp. 2005). Incompetence, when referring to an occupation, relates to the failure to use "the actual ability of a person to perform in that occupation."<sup>1</sup> While not defined in § 375.141, RSMo, incompetence "has been defined in other license discipline contexts as a general lack of professional ability, or a lack of disposition to use an otherwise sufficient professional ability."<sup>2</sup> The definition of "trustworthy" is "worthy of confidence" or "dependable".<sup>3</sup> Irresponsible means "not based on sound reasoned considerations... unprepared or unwilling to meet financial responsibilities."<sup>4</sup> In this case, Capital Reserve paid multiple unsubstantiated medical and non-medical reimbursement requests while Respondent was President and CEO of the company. *Exhibit 2*. Such lack of oversight risked Capital Reserve's solvency and displayed gross incompetence and financial irresponsibility in the conduct of business in this state.

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<sup>1</sup> Section 1.020(8), RSMo 2000.

<sup>2</sup> *Johnson v. Missouri Bd. of Nursing Adm'rs*, 130 S.W.3d 619, 642 (Mo.App. W.D.,2004).

<sup>3</sup> *Siith v. Lakin*, 129 S.W.3d 912, 918 (Mo. App., S.D. 2004).

<sup>4</sup> Webster's Third New International Dictionary, 1196 (1986).

**WHEREFORE**, based on the foregoing, the Director respectfully requests that the Commission make findings of facts and conclusions of law stating that Petitioner has established cause to discipline the license of Respondent, Joseph E. Warden.

Respectfully submitted,

A handwritten signature in cursive script that reads "Tamara Wallace". The signature is written in black ink and is positioned above a horizontal line.

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**CERTIFICATE OF SERVICE**

The undersigned counsel hereby certifies that a true and correct copy of the foregoing was mailed first class, with sufficient postage attached, via the United States Postal Service on this 11th day of April, 2007, to:

Joseph E. Warden  
7334 Berkley Square South  
New Albany, Ohio 43054-8865  
Phone: 614-775-1371

Tamara Wallace